HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 475 of 2003

Diwan Singh — Appellant

Versus

Heera Ballabh & others — Respondents

Approved for reporting.

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Not approved for reporting

Date of decision 10.11.2006.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 475 of 2003

Diwan Singh s/o Sri Shankakr Singh R/o Village Kot Kendriya, P.S. Lohaghat, Tehsil and District Champawat
..... Appellant

versus

1. Sri Heera Ballabh Pandey s/o Sri Prem Ballabh Pandey r/o Bijali Ghar Area, Ward No. 15 Tanakpur, Tehsil and District Champawat
2. United India Insurance Co. Ltd. through Development Manager, Division Office, Haldwani, Tehsil Haldwani, District Nainital
3. The Secretary Defence Ministry Government of India, New Delhi ....Respondents

Sri B.S. Khanka, Advocate for the petitioner
Sri D.S. Patni, Advocate for the respondent no. 2

Dated: November 10, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Hon. Rajesh Tandon, J.

1) This appeal has been preferred against the Award dated 27.11.2003, passed by the Motor Accident Claims Tribunal, Champawat for enhancement of the amount of award.

2) The appellant Diwan Singh preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the injuries sustained by him in a motor vehicle accident. According to the claimant on the fateful day on 6.12.2001 at 9.30 AM he was going to Tanakpur from Pithoragarh by Jeep Taxi No. U.P. 29-0048, when he reached

near village Baparan an Army truck No. 91-D-87255 dashed the Jeep. According to the claimant the truck involved in the accident was being driven rashly and negligently. The deceased sustained grievous injuries in the accident and his right hand was amputated from wrist. According to the claimant he incurred Rs.50,000/- in his treatment. He has become handicapped and is unable to do his business.

3) The respondent no. 1, Heera Ballabh Pandey, owner of the Jeep has filed written statement and has submitted that the jeep in question was being driven by its driver very cautiously and diligently. The driver of the Army Truck was solely responsible for the alleged accident.

4) The United India Insurance Company, insurer of the Jeep has filed the written statement and submitted that the accident had taken place due to negligence of the Army Truck.

5) Respondent no. 3, Union of India in its written statement has submitted that the accident did not take place due to rash and negligent driving by the driver of Truck. The accident took place due to rash and negligent driving by the jeep driver and the jeep was over-loaded.

6) The claimant examined himself as P.W.1 and has filed the copy of the F.I.R., Registration certificate of jeep, cash memos of medicines, certificate of doctor and disability certificate.

7) Opposite party no. 1 has filed copy of the driving licence of Mohan Singh, registration certificate of jeep and fitness certificate.

8) Respondent no.2 has filed copy of Insurance cover note and charge sheet.

9) Opposite party no. 3 also examined Sepoy M.K. Soni, Driver of the Army Truck No. 91-D 8725594 in defence.

10) On the basis of the evidence adduced by the claimant, the Claims Tribunal has held that the accident had taken place due to the rash and negligent driving by the driver of the Army Truck.

11) So far as the compensation is concerned the Tribunal has recorded the finding that the claimant has submitted cash memos and receipt of medical expenses to the extent of Rs.10,600 and as such the Tribunal has awarded Rs.11,000/- to the claimant for medical expenses. The Claims Tribunal has also awarded Rs.2,000/- for pain and suffering. The claims Tribunal has awarded Rs.25,000/- as compensation for permanent disability. Besides this, the Claims Tribunal has awarded a sum of Rs.2,010/- for loss of income for one month. The Claims Tribunal has awarded a compensation of Rs.40,010/- together with costs of Rs.1000/- and pendente lite and future interest at the rate of 9% per annum.

12) Feeling aggrieved by the award of the Claims Tribunal the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, for enhancement of the amount of compensation. Counsel for the appellant has submitted that the claims Tribunal has erred by awarding only Rs.40,000/-.

13) So far as the amount incurred in the treatment of the claimant, the Claims Tribunal has awarded Rs.11,000/- after taking into consideration the cash memos and receipts. We have examined the documents filed by the claimant per list 6-C on record and there is no need to interfere in the assessment made by the Claims Tribunal on this count.

14) So far award of compensation for permanent disability is concerned, the compensation should be awarded keeping into

consideration the profession of the claimant and nature of disability caused to him.

15) The Apex court in **Sheikhupura Transport Co. Ltd. vs. Northern India Transport Insurance Co. (1971) 1 SCC 785** has observed as under:

> *"The pecuniary loss to the aggrieved party would depend upon data which cannot be ascertained accurately but must necessarily be an estimate or even partly a conjecture.*
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> * * * *
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> *The determination of the question of compensation depends on several imponderables. In the assessment of those imponderables, there is likely to be a margin of error."*

16) Relying upon the case of Sheikhupurta Transport Co. (supra) Apex Court in the case of **Nagappa vs. Gurudayal Singh (2003) 2 SCC 274,** has observed as under:

> **26.** *While calculating such damages, the Tribunal/court is required to have some guesswork taking into account the inflation factor. This aspect is well discussed by M.J. Rao, J. (as he then was) in P. Satyanarayana v. I. Babu Rajendra Prasad. The learned Judge has given a Classification of Injuries: A Useful Guide, and has observed thus:*
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> *"24. If a collection of cases on the quantum of damages is to be useful, it must necessarily be classified in such a way that comparable cases can be grouped together. No doubt, no two cases are*

alike but still, it is possible to make a broad classification which enables one to bring comparable awards together. Such classifications have been made by Bingham in his Motor Claims Cases, Munkman in his Employer's Liability and Kemp & Kemp in their Quantum of Damages. (Munkman, p. 181.)

* * *

26. Cases relating to injuries have been classified into four categories i.e. (a) total wrecks; (b) partial wrecks and (c) where limbs and eyes and other specific parts of the body are lost, which can be subgrouped according to the type of limb lost and (d) smaller injuries which cannot be specifically grouped but for which compensation can be assessed by comparison with injuries of loss of limbs e.g. comparing permanent 'wrist injuries' with 'loss of hand', or comparing a temporary broken arm with the loss of the arm etc. Such comparisons are often made by Judges. Munkman points out that in America, Mr Melvin M. Belli, an eminent lawyer, classified injuries into 11 categories as: (1) back; (2) traumatic amputation of leg; (3) paralysis; (4) hand or arm off; (5) death; (6) multiple fractures; (7) burns; (8) personality change; (9) blindness; (10) brain injury and (11) occupational diseases. By 1967, awards (say) for blindness had risen to 9,30,000 dollars (Munkman, pp. 181-82). Today after 20 years, these awards must have gone up further.

The 'total wreck' category comprises of cases of complete incapacity for work and virtually no enjoyment of life e.g. paralysis, severe brain injury causing insanity, multiple injuries leaving the victim a total cripple. The 'partial wreck' cases are also cases where the entire body is affected and not one set of limbs alone as in the third category. Cases of brain injuries resulting in a personality change and multiple injuries with grave disfigurement fall in this second category. The third category does not present much difficulty for sub-classification. The fourth category deals with minor injuries in a limb which can be compared with major injuries in the same limb.

Past inflation – Relevancy of date of accident

27. The dates of accident resulting in similar injuries have great relevancy. For example, if a particular conventional sum of (say) Rs 10,000 was awarded towards the non-pecuniary damages of loss of expectation of life, loss of amenities and pain and suffering – all put together – in a case of amputation of a leg consequent to an accident in 1970, the award to be made for an identical loss today would have to be upgraded from the 1970 value to its value in 1987, having regard to the erosion of the value of the rupee. This can be done by comparing the cost of living index in 1970 with that in 1987.

Charlesworth on Negligence, 6th Edn., 1977, para 14, says, the 'conventional figures' must keep 'pace with the times in which we live'. He says that this can be well illustrated by considering the class of injury resulting (say) in the loss of sight in one eye and the conventional sum lay around £ 2000 about a quarter of a century ago but today in 1977 it will probably exceed £ 5000 or it ought to do. Kemp & Kemp on Damages, 1982, Chapter 7, para 7001, say: If a court is seeking to make a comparison with some earlier award (for non-pecuniary losses) and if by the date of the comparison, the currency in which the earlier award was made has declined by, say, 50 per cent, one must surely double the earlier award in order to make a valid comparison. The authors have compiled two tables (at paras 7007 and 7008), one showing the current level of general damages for 'pain and suffering' and 'loss of amenities' in cases of severe injury and the other showing similar awards for earlier years, and have compared whether courts are or are not keeping pace with inflation. The authors ask, way tortfeasors alone, as a class should be excused from paying the value-based price? In Walker v. John McLean & Sons Ltd. the court found that while the value of the pound fell by 50% between 1957 and 1972 (over a period of 15 years), there was a steeper fall between 1973 to 1978 (within 5 years) when it again fell by 50% (vide Kemp & Kemp's Tables). 'Conventional' figures, if they do not keep

pace with inflation, might indeed become 'contemptible'. Kemp & Kemp point out that an award of £ 16,000 in 1879 would be about £ 5,00,000 in 1982. After Walker case courts in England are carefully adjusting awards for 'pain and suffering' and 'loss of amenities' to keep pace with inflation." (TAC pp. 244-46, paras 22-24)

17) Here in this case the claimant is an agriculturist. A perusal of the copy of the Handicap Certificate paper no. 34-C, issued by the Chief Medical Officer, Champawat shows that the right hand of the claimant was amputated. According to the certificate the claimant has become 70% disabled. To an agriculturist, loss of wrist of right hand vitally affects not only his working capacity but also his livelihood.

18) Appellant Diwan Singh in his statement on oath has stated that he was earning Rs.4,000/- per month prior to his accident and amputation of his right hand. He is a young person of 20 years age. Considering his active working life upto 65 years, he will have to lead at least 45 years without the help of right hand. Thus keeping in view all the facts and circumstances of the case we are of the opinion that apart from the expenses incurred in the treatment of the claimant i.e. Rs.11,000/- a consolidated sum of Rs.2,00,000/- for pain and suffering and future pecuniary loss would meet the ends of justice. Thus the petitioner is entitled to get total compensation of Rs.2,11,000/- along with pendente lite and future interest @ 7% per annum.

19) Accordingly, the appeal is allowed. The compensation awarded by the Claims Tribunal is enhanced to Rs.2,11,000/-

along with pendente lite and future interest at the rate of 7% per annum.

20) No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

Dated: November 10, 2006

*Dhyani